

1 S. SCOTT GREENBERG, ESQ.
Nevada Bar No. 4622
2 CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL
3 5100 West Sahara Avenue
4 Las Vegas, Nevada 89146
Telephone: (702) 799-5373
5 Email: greens2@nv.ccsd.net
Attorneys for Defendants
6

7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
9

10 J.H., a minor, by and through his natural Parent
11 and Guardian Ad Litem, ANDREA
ESQUIVEL,

12 Plaintiff,

13 v.
14

15 PATRICK SIROKY, individually; CLARK
COUNTY SCHOOL DISTRICT,

16 Defendants.
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Case No. 2:18-cv-02151-JAD-GWF

**STIPULATED PROTECTIVE ORDER
AND CONFIDENTIALITY
AGREEMENT**

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19 The parties hereby enter this stipulation and request such be entered as an order of the
20 Court to comply with the Family Educational Rights and Privacy Act ("FERPA") of 1974, 20
21 U.S.C. §1232g, and Nevada statute NRS 392.029, which generally protects the disclosure of
22 student educational records and personally identifiable student information. In the course of this
23 litigation, it is expected there may be the need for discovery related to third-party student
24 designated MG who was involved in the incident underlying this litigation. This stipulation is
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1 being entered to protect the confidentiality of third-party student records pursuant to federal and
2 state law referenced above. Pursuant to this stipulation, the Court hereby finds as follows:

3 **PURPOSES AND LIMITATIONS**

4 Discovery activity in this action may involve production of confidential, proprietary, or
5 private information for which special protection from public disclosure and from use for any
6 purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby
7 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties
8 acknowledge that this Order does not confer blanket protections on all disclosures or responses
9 to discovery, or any categories of information not specifically addressed herein, and that the
10 protection it affords from public disclosure and use extends only to the limited information or
11 items that are entitled to confidential treatment under the applicable legal principles, and
12 designated “confidential” as described herein.

13 1. The “Litigation” shall mean the above-captioned case, in the United States District
14 Court, District of Nevada Case No. 2:18-cv-02151-JAD-GWF.

15 2. “Documents” or “Information” shall mean and include documents (whether in hard
16 copy or electronic form), disclosed, filed, or produced in the case.

17 3. “Producing Party” shall mean any person or entity who provides, serves, discloses,
18 files, or produces any Documents or Information. “Receiving Party” shall mean any person or
19 entity who receives any such Documents or Information.

20 4. The privacy of students who are not parties to the Litigation is protected under federal
21 and state law and as a school district that receives federal funding, CCSD is bound by the Family
22 Educational Rights and Privacy Act (“FERPA”) and is not at liberty to disclose personally
23 identifying information of its students without written consent or court order. The Parties
24 acknowledge that information that could reasonably likely lead to admissible evidence in this
25 Litigation could contain information that is protected by FERPA. Accordingly, the Parties agree

1 that, in conjunction with this Litigation, the Parties may designate any Document, thing,
2 material, testimony, or other Information derived from third-party student records of MG, or
3 other student not including Plaintiff, as “CONFIDENTIAL” under the terms of this
4 Confidentiality Agreement and Protective Order (hereinafter “Order”) that shall not be provided
5 or made available to third parties except as permitted by, and in accordance with, the provisions
6 of this Order.

7 5. This order shall be applicable to FERPA protected information discoverable in this
8 Litigation. Any such information or Documents shall be produced following compliance with
9 the FERPA’s notice provision requiring at least 10-day notice to the applicable parent/student.
10 The Parties acknowledge FERPA-protected information or Documents will be marked
11 CONFIDENTIAL pursuant to this Stipulated Confidentiality Agreement and Protective Order.

12 6. CONFIDENTIAL Documents shall be so designated by marking or stamping each
13 page of the Document produced to or received from a Party with the legend “CONFIDENTIAL.”

14 7. Testimony taken at a deposition may be designated as CONFIDENTIAL by any Party
15 making a statement to that effect on the record at the deposition or within thirty (30) business
16 days of receipt of the transcript. Arrangements shall be made with the court reporter taking and
17 transcribing such deposition to label such portions appropriately.

18 8. CONFIDENTIAL Information/Documents shall be maintained in strict confidence by
19 the Parties who receive such, shall be used solely for the purposes of this Litigation, and shall not
20 be disclosed to any person except:

21 (a) The United States District Court, District of Nevada, or any other
22 court to which this matter may be transferred (the “Court”), so long as the party seeking to file a
23 confidential document under seal complies with the Ninth Circuit’s directives in *Kamakana v.*
24 *City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006) and the Court’s electronic filing
25 procedures set forth in Local Rule 10-5(b);

1 (b) In the event of an appeal, the applicable appellate court which the
2 appeal is proceeding so long as that document is filed under seal;

3 (c) The attorneys of record in this Litigation and their co-shareholders,
4 co-directors, partners, employees, and associates who are assisting in the Litigation (collectively
5 hereafter referred to as "Counsel");

6 (d) A Party, or an officer, director, or employee of a Party or of a
7 Party's affiliate, as long as any such person agrees to be bound by the terms and conditions of
8 this Agreement;

9 (e) Subject to the terms of Paragraph 13 below, experts or consultants
10 and their staff, retained by the Parties and/or Outside Counsel in this Litigation for the purposes
11 of this Litigation;

12 9. If a witness is providing or is provided CONFIDENTIAL Information/Documents
13 during a deposition, said person will be advised such is CONFIDENTIAL and that such may not
14 be discussed outside the deposition.

15 10. All designations of Information/Documents as CONFIDENTIAL by the Producing
16 Party must be made in good faith. The Producing Party has the burden at all times to establish
17 that information or documents designated CONFIDENTIAL pursuant to this stipulation and
18 order is entitled to such protection under Ninth Circuit precedent.

19 11. A Party may object to the designation of particular Information/Document as
20 CONFIDENTIAL by giving written notice to the Party designating such. The written notice
21 shall identify the Information to which the objection is made. If the parties cannot resolve the
22 objection within ten (10) business days after the time the notice is received, it shall be the
23 obligation of the Party designating the Information as CONFIDENTIAL to file an appropriate
24 motion requesting that the Court determine whether the disputed Information should be subject
25 to the terms of this Protective Order. If such a motion is filed within ten (10) business days after

1 the date the parties fail to resolve the objection, the disputed Information shall be treated as
2 CONFIDENTIAL under the terms of this Protective Order until the Court rules on the motion.

3 12. Any Information designated CONFIDENTIAL shall be held in strict confidence by
4 each person to whom it is disclosed; shall be used solely for the purposes of this Litigation; and
5 shall not be used for any other purpose, including, without limitation, use in any other lawsuit.

6 13. With respect to experts pursuant to Paragraph 8, to become an authorized to access
7 CONFIDENTIAL Information/Documents, the expert must be provided with a copy of this
8 Order and must sign a certification acknowledging that he/she has carefully and completely read,
9 understands, and agrees to be bound by this Order. The Party on whose behalf such a
10 Certification is signed shall retain the original Certification.

11 14. Notwithstanding any other provision herein, nothing shall prevent a Party from
12 revealing CONFIDENTIAL Information/Documents to a person who created or previously
13 received such Information/Documents.

14 15. The inadvertent production of any Information/Document without it being properly
15 marked or otherwise designated shall not be deemed to waive any claim of confidentiality with
16 respect to such Information. If a Producing Party, through inadvertence, produces any
17 CONFIDENTIAL Information without marking or designating it as such in accordance with the
18 provisions of this Order, the Producing Party may, promptly on discovery, furnish a substitute
19 copy properly marked along with written notice to all Parties (or written notice alone as to non-
20 documentary Information) that such Information is deemed CONFIDENTIAL and should be
21 treated as such in accordance with the provisions of this Order. Each receiving person must treat
22 such Information as CONFIDENTIAL in accordance with the notice from the date such notice is
23 received.

24 16. A copy of this Order shall be shown to each attorney acting as counsel for a Party
25 and to each person to whom CONFIDENTIAL Information/Document will be disclosed.

1 17. Nothing in this Order shall be construed as an admission or agreement that any
2 specific Information is or is not confidential, subject to discovery, relevant, or admissible in
3 evidence in any future proceeding.

4 18. The Parties shall comply with the requirements of Local Rule 10-5(b), and the Ninth
5 Circuit's decision in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir.
6 2006), with respect to any documents filed under seal in this matter.

7 19. If either Party becomes required by law, regulation, or order of a court or
8 governmental entity to disclose any CONFIDENTIAL Information/Document that has been
9 produced to it under the terms of this Order, such Party will reasonably notify the other Parties,
10 in writing, so that the original Producing Party has an opportunity to prevent or restrict such
11 disclosure.

12 20. The obligation to treat all Information/Document designated as CONFIDENTIAL in
13 accordance with the terms of this Order and not to disclose such shall survive any settlement or
14 other termination of this Litigation.

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21. The Parties may seek modification of this Order by the Court at any time, by stipulation or for good cause.

IT IS SO STIPULATED.

Dated this 14th day of January, 2019

CLARK COUNTY SCHOOL DISTRICT
Office of the General Counsel

GLEN LERNER INJURY
ATTORNEYS

By: /s/ S. Scott Greenberg
S. SCOTT GREENBERG
NVB 4622
5100 W. Sahara Ave.
Las Vegas, NV 89146
Attorney for Defendants

By: /s/ Joshua L. Benson
 JOSHUA L. BENSON
 NVB 10514
 4795 S. Durango Dr.
 Las Vegas, NV 89147
 Attorney for Plaintiff

ORDER

IT IS HEREBY ORDERED.

DATED this 23rd day of January, 2019.

George Foley Jr

UNITED STATES MAGISTRATE JUDGE